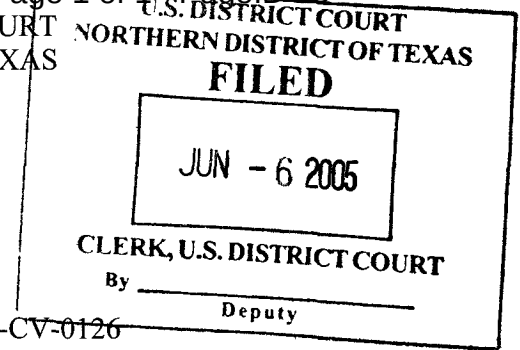


IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
AMARILLO DIVISION



CHARLES WESTERBY,

Petitioner,

v.

DOUGLAS DRETKE, Director,  
Texas Department of Criminal Justice,  
Correctional Institutions Division,

Respondent.

§  
§  
§  
§  
§  
§  
§  
§  
§  
§

**ORDER ADOPTING REPORT AND RECOMMENDATION and  
DISMISSING PETITION FOR A WRIT OF HABEAS CORPUS**

Came this day for consideration the Petition for a Writ of Habeas Corpus by a Person in State Custody filed by petitioner. On May 17, 2005, the United States Magistrate Judge issued a Report and Recommendation in this cause, recommending therein that petitioner's habeas application be dismissed for failure to pay the filing fee and for lack of subject matter jurisdiction. On May 31, 2005, petitioner submitted a copy of an I-25 Inmate Request for Withdrawal form reflecting he authorized the withdrawal of the requisite filing fee in this case on May 26, 2005. Petitioner also submitted a pleading which is predominately incoherent. Petitioner does not, however, appear to object to the finding that this Court lacks subject matter jurisdiction for petitioner's failure to obtain permission from the Fifth Circuit Court of Appeals to file a successive habeas corpus application.

The undersigned United States District Judge has made an independent examination of the record in this case. The recommendation in the Magistrate Judge's Report and Recommendation that this case be dismissed for lack of subject matter jurisdiction is hereby ADOPTED. Accordingly, the petition for a writ of habeas corpus filed by petitioner is hereby DISMISSED for lack of subject matter jurisdiction.

IT IS SO ORDERED.

ENTERED this 3rd day of June 2005.

MARY LOU ROBINSON  
UNITED STATES DISTRICT JUDGE